IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP Nos. 778, 1182, 1183, 1191, 1193, 1195, 1199, 1201, 1207, 1226, 1229, 304, 817, , 1233, 938, 979, 981, 1197, 980, 991, 988, 999, 969, 939, 940, 958, 1192, 1200, 782, 793, 794, 1227, 1186, 1187, 895, 894, 1196, 824, 1169, 1165, 1181, 1110, 1170, 1178, 1126, 1002, 1008, 1093, 1005, 937, 964, 927, 925, 926, 914 and 1000 of 2006, 132, 530, 886, 1542, 1009, 133, 1021, 874, 873, 1543, 119, 1364, 987, 1267 and 1286 of 2007.

Judgment reserved on: 13.12.2007

Date of decision: 29.12.2007

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1. CWP No. 778 of 2006.

Gauri Dutt ..Petitioner

Versus

State of H.P. ..Respondent

2. CWP No. 1182 of 2006

State of H.P. ..Petitioner

Versus

Baldev Singh ..Respondent

3. CWP No. 1183 of 2006

State of H.P. ..Petitioner

Versus

Kuldip Kumar ..Respondent

4. CWP No. 1191 of 2006

State of H.P. ..Petitioner

Versus

Anota Ram ..Respondent

5. CWP No. 1193 of 2006

State of H.P. ..Petitioner

Versus

Jitender Kumar ..Respondent

6. CWP No. 1195 of 2006

State of H.P. ..Petitioner

Versus

Tej Ram ..Respondent

7. CWP No. 1199 of 2006

State of H.P. ..Petitioner

Versus

Vijay Kumar ..Respondent

8. CWP No. 1201 of 2006

State of H.P. ..Petitioner

Versus

Megh Singh ..Respondent

9. CWP No. 1207 of 2006

State of H.P. ..Petitioner

Versus

Khem Chand ..Respondent

10. CWP No. 1226 of 2006

State of H.P. ..Petitioner

Versus

Om Parkash **..Respondent**

11. CWP No. 1229 of 2006

State of H.P. **..Petitioner**

Versus

Ramesh Chand **..Respondent**

12. CWP No. 304 of 2006

State of H.P. **..Petitioner**

Versus

Surjit Singh **..Respondent**

13. CWP No. 817 of 2006

State of H.P. **..Petitioner**

Versus

Kartar Singh **..Respondent**

14. CWP No. 1233 of 2006

State of H.P. **..Petitioner**

Versus

Parvesh Singh **..Respondent**

15. CWP No. 938 of 2006

State of H.P. **..Petitioner**

Versus

Rameshwari Devi **..Respondent**

16. CWP No. 979 of 2006

State of H.P. **..Petitioner**

Pawan Kumar ..Respondent

17. CWP No. 981 of 2006

State of H.P. ..Petitioner

Versus

Bikramjit ..Respondent

18. CWP No. 1197 of 2006

State of H.P. ..Petitioner

Versus

Ramesh Kumar ..Respondent

19. CWP No. 980 of 2006

State of H.P. ..Petitioner

Versus

Surjeet Singh ..Respondent

20. CWP No. 991 of 2006

State of H.P. ..Petitioner

Versus

Rakesh Kumar ..Respondent

21. CWP No. 988 of 2006

State of H.P. ..Petitioner

Versus

Paresh Sharma ..Respondent

22. CWP No. 999 of 2006

State of H.P. ..Petitioner

Versus

Saravjeet **..Respondent**

23. CWP No. 969 of 2006

State of H.P. **..Petitioner**

Versus

Umesh Kumar **..Respondent**

24. CWP No. 939 of 2006

State of H.P. **..Petitioner**

Versus

Parvesh Kumar **..Respondent**

25. CWP No. 940 of 2006

State of H.P. **..Petitioner**

Versus

Deepak Mahajan **..Respondent**

26. CWP No. 958 of 2006

State of H.P. **..Petitioner**

Versus

Manohar Lal **..Respondent**

27. CWP No. 1169 of 2006

State of H.P. **..Petitioner**

Versus

Amin Chand **..Respondent**

28. CWP No. 1165 of 2006

State of H.P. **..Petitioner**

Versus

Hira Devi **..Respondent**

29. CWP No. 1181 of 2006

State of H.P. **..Petitioner**

Versus

Dheeraj Mahajan **..Respondent**

30. CWP No. 1110 of 2006

State of H.P. **..Petitioner**

Versus

Prithvi Singh **..Respondent**

31. CWP No. 1170 of 2006

State of H.P. **..Petitioner**

Versus

Rameshwar Dutt **..Respondent**

32. CWP No. 1178 of 2006

State of H.P. **..Petitioner**

Versus

Chabi Ram **..Respondent**

33. CWP No. 1126 of 2006

State of H.P. **..Petitioner**

Versus

Uma Dutt **..Respondent**

34. CWP No. 1002 of 2006

State of H.P. ..Petitioner

Versus

Upinder Kumar ..Respondent

35. CWP No. 1008 of 2006

State of H.P. ..Petitioner

Versus

Jai Chand ..Respondent

36. CWP No. 1093 of 2006

State of H.P. ..Petitioner

Versus

Amar Chand ..Respondent

37. CWP No. 1005 of 2006

State of H.P. ..Petitioner

Versus

Rajesh Kumar ..Respondent

38. CWP No. 937 of 2006

State of H.P. ..Petitioner

Versus

Rakesh Kumar ..Respondent

39. CWP No. 964 of 2006

State of H.P. ..Petitioner

Versus

Ajit Kumar ..Respondent

40. CWP No. 927 of 2006

State of H.P. ..Petitioner

Versus

Onkar Singh ..Respondent

41. CWP No. 925 of 2006

State of H.P. ..Petitioner

Versus

Pawan Kumar ..Respondent

42. CWP No. 926 of 2006

State of H.P. ..Petitioner

Versus

Chaman Lal ..Respondent

43. CWP No. 914 of 2006

State of H.P. ..Petitioner

Versus

Rattan Chand ..Respondent

44. CWP No. 1192 of 2006

State of H.P. ..Petitioner

Versus

Vipan Kumar ..Respondent

45. CWP No. 1200 of 2006

State of H.P. ..Petitioner

Versus

Vijay Kumar ..Respondent

46. CWP No. 782 of 2006

State of H.P. ..Petitioner

Versus

Suman Kumar ..Respondent

47. CWP No. 793 of 2006

State of H.P. ..Petitioner

Versus

Surinder Pal ..Respondent

48. CWP No. 794 of 2006

State of H.P. ..Petitioner

Versus

Nek Ram ..Respondent

49. CWP No. 1227 of 2006

State of H.P. ..Petitioner

Versus

Anil Kumar ..Respondent

50. CWP No. 1186 of 2006

State of H.P. ..Petitioner

Versus

Dheeraj Kumar ..Respondent

51. CWP No. 1187 of 2006

State of H.P. ..Petitioner

Versus

Ashok Kumar **..Respondent**

52. CWP No. 895 of 2006

State of H.P. **..Petitioner**

Versus

Dharam Singh **..Respondent**

53. CWP No. 894 of 2006

State of H.P. **..Petitioner**

Versus

Naresh Kumar **..Respondent**

54. CWP No. 1196 of 2006

State of H.P. **..Petitioner**

Versus

Sanjeev Awasthi **..Respondent**

55. CWP No. 824 of 2006

State of H.P. **..Petitioner**

Versus

Sohan Singh **..Respondent**

56. CWP No. 1000 of 2006

State of H.P. **..Petitioner**

Versus

Sumeet Saini **..Respondent**

57. CWP No. 132 of 2007

State of H.P. **..Petitioner**

Versus

Des Raj **..Respondent**

58. CWP No. 886 of 2007

State of H.P. **..Petitioner**

Versus

Ravi Kumar **..Respondent**

59. CWP No. 1542 of 2007

State of H.P. **..Petitioner**

Versus

Munish Dogra **..Respondent**

60. CWP No. 1009 of 2007

State of H.P. **..Petitioner**

Versus

Hans Raj **..Respondent**

61. CWP No. 133 of 2007

State of H.P. **..Petitioner**

Versus

Narinder Singh **..Respondent**

62. CWP No. 1021of 2007

State of H.P. **..Petitioner**

Versus

Parkash Chand **..Respondent**

63. CWP No. 874 of 2007

State of H.P. **..Petitioner**

Versus

Kishori Lal ..Respondent

64. CWP No. 873 of 2007

State of H.P. ..Petitioner

Versus

Onkar Singh ..Respondent

65. CWP No. 1543 of 2007

State of H.P. ..Petitioner

Versus

Badri Prashad ..Respondent

66. CWP No. 119 of 2007

State of H.P. ..Petitioner

Versus

Surinder Kumar ..Respondent

67. CWP No. 530 of 2007

State of H.P. ..Petitioner

Versus

Gian Chand ..Respondent

68. CWP No. 1364 of 2007

State of H.P. ..Petitioner

Versus

Gian Singh ..Respondent

69. CWP No. 987 of 2007

State of H.P. **..Petitioner**

Versus

Anant Ram **..Respondent**

70. CWP No. 1267 of 2007

State of H.P. **..Petitioner**

Versus

Joginder Singh **..Respondent**

71. CWP No. 1286 of 2007

State of H.P. **..Petitioner**

Versus

Raj Kumar **..Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] Yes

Mr. M.S.Chandel, Advocate General, with
Mr. R.M.Bisht, Deputy Advocate General, for the petitioner.

S/Shri A.K.Gupta, Gupta, R.D.Kaundal, N.K.Sharma, Lovneesh Kanwar, R.K.Sharma, Naresh Kaul, Surinder Sharma, Onkar Jairath, Vijay Verma, Advocates, for the respondents

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Per Deepak Gupta, J.

By this judgment we are disposing of the aforesaid batch of writ petitions since the following

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

common questions of law arise for decision in these petitions.

1. Whether the scheme of putting the workers on work charged basis as approved by the Apex Court in Mool Raj Upadhyaya's case is applicable to those daily waged employees who had not completed minimum of 240 days of service in a calendar year as on 31st December, 1993 ?
2. If the answer to the first question is in the negative, what will be the process of regularization of services of those employees who had not completed 240 days of service in a calendar year as on 31st December, 1993 or had joined service after Ist January, 1994 ?
3. Whether the scheme, as approved by the Apex Court, in Mool Raj Upadhyaya's case, is only applicable to the employees of the Irrigation and Public Health Department and Public Works Department of the State of Himachal Pradesh or is applicable to all the daily rated employees working under the Government of H.P. ?
4. Where if an employee has rendered service on daily waged basis on 2 separate posts in lower and higher scales, can the employee be given benefit of the service rendered by him in the lower scale and be regularized in the higher scale by combining the two services after 10 years ?

The background of the case is that there were many daily waged employees in the State of Himachal Pradesh. These daily waged employees had been

continuing on daily wages for a large number of years. Some had worked as daily waged employees for more than 20 years. They were clamouring for regularization of services so that they could get better pay and would also get the other benefits available to regular government employees.

Some of the employees of the IPH wing of the PWD department of H.P. directly approached the Supreme Court by filing a petition under Article 32 of the Constitution of India. The petition filed by the workers was listed before the Apex Court on 9th November, 1992 and the State of Himachal Pradesh stated before the Apex Court that the matter regarding framing of policy for regularization of daily rated workers employed in the State of H.P. is under active consideration of the State Government. The policy as framed by the State was placed before the Apex Court alongwith the affidavit of Mr. K.J.B.V. Subramanyam, Joint Secretary (Public Works Department) to the Government of Himachal Pradesh. The policy, as prepared by the State of Himachal Pradesh, was as follows:-

> "1. **Daily wage Muster Roll workers, whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year as on 31.12.1991, will be treated as**

monthly rated employes, on a consolidated fixed pay without any allowances, and an annual increment, as para-1 Annexure-A. They shall be entitled to annual increment fore those months, in which they work for a minimum of 15 working days, per calendar month. They shall continue to be monthly rated employees, till they are appointed as work-charged employees.

2. **All those daily rated employees whether skilled or unskilled who had completed 10 years of continuous service with a minimum of 240 working days in a calendar year as on 31.12.1987, shall be appointed as work charged employees in a phased manner as soon as the stay orders of the Hon'ble High Court of Himachal Pradesh is vacated. On appointment as work-charged employees, they shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government.**
3. **The daily rated workers, who would have completed 20 years of service as on 31.12.1992 shall be regularized w.e.f. 1.4.1993 on the basis of seniority cum suitability including physical fitness. On regularization, they shall be put in the minimum of the time scale of pay applicable to the lowest corresponding post concerned under the Govt. and would be entitled to all other benefits available to regular Govt. servants of the corresponding grade.**
4. **In the event of any anomaly between the wages prescribed for the Monthly Rated Employees and that prescribed by the Govt. from time to time under the Minimum Wages Act, 1948, the Monthly Rated Employees are entitled to wages, which are higher, at any point of time, in future.**
5. **In the case of those whose services are no longer required, they may be retrenched in accordance with the procedure prescribed by law.**

6. **This scheme will not apply to those persons, whose services are used temporarily for seasonal/abandonment of such works.**
7. **The seniority of daily wagers shall be reckoned from the date of joining duty and maintained at the Divisional Level of the department concerned.**
8. **No person exceeding the age of 60 years, shall remain engaged as daily rated/monthly rated/work charged employee under the scheme.**
9. **A panel of retrenched labour (hereinafter called as PRL) shall be maintained at the Divisional Level of the department concerned, for the sake of future requirement/engagement, as and when the need arises. All those daily rated/monthly rated workers, who may be working within a particular Divisional and were retrenched on account of completion of any work/project, may join this PRL. The services of such persons can be utilized for new works/projects, strictly o the basis of seniority, within the same Division in accordance with the provisions contained under Section 25(H) of the Industrial Disputes Act, 1947.**
10. **Where any casual/daily rated persons are retrenched, and the employer proposed to take into his employment, any person/persons, he shall give an opportunity to the retrenched persons, who are citizens of India to offer themselves for re-employment and such retrenched persons who offer themselves for re-employment shall have preference over other persons."**

Para 6 of the affidavit alongwith which the scheme was filed reads as follows:-

"6. That although the scheme is applicable to the daily wage muster roll workers of all Departments in Himachal Pradesh, the figures in respect of P.W.D. and Irr. &

Public Health are only available, which are mentioned above."

During the course of the hearing of the petition before the Supreme Court, the Apex Court passed certain other interim directions. On 14.12.1992 the Apex Court directed as follows:-

"Before deciding the cases on merits in a just and proper manner, some more material would be necessary. In this regard, it would be necessary for the parties to file additional affidavits and further material to show as to what wages are paid to other muster-roll/daily-wage employees employed in other departments of Himachal Pradesh itself. It would also be necessary to show as to what wages are being paid to other muster-roll/daily-wage employees in other States in the country. It would also be relevant to furnish the details as to what wages are being paid at present to non-skilled workers in Himachal Pradesh and other States if employed by the private persons.

In view of the fact that these matters cannot be disposed of on merits without getting the above information and is likely to take some more time, we now give the following direction as regards the petitioners in modification of the earlier order passed on August 1, 1991:-

1. **Learned counsel for the State of Himachal Pradesh states that some persons out of the petitioners have already been fixed at the lowest stage of the scale of pay given to regular employees and they are prepared to give the same benefit to 37 more persons out of the petitioners. Learned counsel, however, pointed out that the difficulty in granting such relief to 37 persons is on account of a direction given by the High Court which is coming in their way. We, therefore, direct that irrespective of any order of the**

High Court, the respondents would grant an appropriate relief to 37 persons more out of the petitioners from the same date as given to some of the petitioners already.

2. **As regard the remaining petitioners, they would also be paid consolidated monthly wages at the lowest scale of pay as given to the regular employees of the same cadre, or if any higher pay scales have been mentioned in the scheme furnished by the State of Himachal Pradesh before this Court, they shall be entitled to monthly wages at the lowest scale of such higher pay scales.**
3. **They shall also be entitled to the annual increments as allowed in the scheme itself.**
4. **The petitioners falling under para 2 above shall be given monthly wages from 1.1.1993."**

Thereafter Mr. K.J.B.V. Subramanyam filed an affidavit affirmed on 20th March, 1993 supplying the information required by the Supreme Court about the wages being paid to the daily waged employees in various departments of the State of Himachal Pradesh.

The scheme was finally considered by the Supreme Court in Mool Raj Upadhyaya's case supra in the light of various affidavits filed before it. The Apex Court approved the scheme with certain modifications and paras 1 to 4 of the scheme, as proposed by the State of Himachal Pradesh, were substituted by the following:-

"1. Daily wage/Muster Roll Workers, whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a

calendar year on Deceber 21, 1993, shall be appointed as work charged employees with effect from January 1, 1994 and shall be put in the time scale of pay applicable to the corresponding lowest grade in the Government;

2. **Daily wage/Muster Roll Workers, whether skilled or unskilled, who have not completed 10 years of continuous service with a minimum of 240 days in a calendar year on December 31, 1993, shall be appointed as work-charged employees with effect from the date they complete the said period of 10 years of service and on such appointed they shall be put in the time scale of pay applicable to the lowest grade in the Government;**
3. **Daily-wage/Muster Roll Workers, whether skilled or unskilled, who have not completed 10 years of continuous service with a minimum of 240 days in a calendar year on Deceber 31, 1993, shall be paid daily wages at the rates prescribed by the Government of Himachal Pradesh from time to time for daily-wage employees falling in Class III and Class IV till they are appointed as work-charged employees in accordance with paragraph 2;**
4. **Daily-wage/Muster Roll Workers shall be regularized in a phased manner on the basis of seniority-cum-suitability including physical fitness. On regularization they shall be put in the minimum of the time scale payable to the corresponding lowest grade applicable to the Government and would be entitled to all other benefits available to regular Government servants of the corresponding grade."**

The Supreme Court directed that the scheme, as modified, shall be implemented w.e.f. January 1, 1994. There was no dispute in respect of the employees who

had completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31st December, 1993. The State Government complied with this part of the order and most of these employees were put on work charged basis w.e.f. 1.1.1994. The State of Himachal Pradesh kept creating posts to comply with the directions of the Apex Court on daily rated basis. Various orders were issued for regularization of daily waged contingent workers.

Thereafter on 6th May, 2000 the State of Himachal Pradesh issued fresh policy for regularization of daily waged contingent workers. Even in respect of those employees who had not completed 10 years of service as on 31.12.1993, but had completed at least one year of service prior to 31.12.1993, there is no dispute that they are also entitled to be placed on work charged basis on completion of 10 years. Though the State of H.P. had initially taken the stand that these employees would be governed by the subsequent policy framed by the State of H.P. on 6th May, 2000 relating to regularization of daily waged/contingent paid workers, this stand of the State was rejected by the Supreme Court in **State of H.P. Vs. Gehar Singh** reported in **Latest HLJ 2006 (SC) 363** wherein the Apex Court held as follows:-

"9. x x x x x x x x x x x. The Scheme as referred to in the case of Mool Raj Upadhyaya envisages two stages in regularizing the services of the Daily Wage/Muster Roll workers. In the first stage, after completion of 10 years or more continuous service with a minimum of 240 days in a calendar year on 31st December, 1993, Daily Wage/Muster Roll workers were to be appointed as work-charged employees with effect from Ist January, 1994. Thereafter they were to be regularized in the second stage in a phased manner on the basis of seniority cum suitability including physically fitness. Even while challenging the direction given by the Himachal Pradesh Administrative Tribunal on 23rd October, 2003, the State of Himachal Pradesh made out a case that the respondents were claiming regularization of their services with effect from Ist April,, 1998. It was also urged that it had been brought to the notice of the Tribunal that the respondents were daily waged workers and as per the instructions dated 6th May, 2000, they were entitled for work charged status only as and when the posts were sanctioned by the State Government in a phased manner strictly on the basis of seniority. The aforesaid case made out by the State of Himachal Pradesh before the High Court was a clear departure from the directions given in Mool Raj Upadhyaya's case. The respondents had only claimed the benefit of the Betterment Scheme which was placed before this Court in Mool Raj Upadhyaya's case and had prayed for work charged status from Ist January, 2000, before the Tribunal whereas the change in policy was brought about on 6th May, 2000. It is on that basis that the Tribunal directed that the respondents be given work charged status with effect from 1st January, 2000. Notwithstanding the fact that the services of the respondents have been regularized with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, in our view, be denied

the benefits as directed to be given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in Mool Raj Upadhyaya's case."

We have separately dealt with the employees who had completed more than one year of service as on 31.12.1993 and have directed that all of them shall be confirmed on their completion of 10 years of service in terms of para 2 of the scheme.

The stand of the State is that all those employees who were either employed on or after 1.1.1994 or who had not completed 240 days of service upto 31.12.1993 have to be governed by the new policy of 2006 and cannot be granted work charge status on completion of 10 years in terms of the scheme as modified by the Supreme Court. On the other hand, learned counsel for the employees submit that the scheme, as approved by the Apex Court, has attained the status of law in terms of Article 141 of the Constitution of India and the State Government has no right to modify the scheme without leave of the Apex Court. It is further pointed out that the State Government has in fact moved an application in the Apex Court to permit it to modify the scheme. It has also been urged that the policy of 2000

only relates to regularization of service and the workmen in the present cases have not sought regularization of service, but are only seeking the grant of work charge status in terms of Mool Raj Upadhyaya's case. It is also contended that there can be no discrimination between the employees who had completed at least 240 days of service as on 31.12.1993 and those who had not completed such service.

A perusal of the scheme, as prepared by the State of H.P. and submitted to the apex Court in Mool Raj Upadhyaya's case clearly shows that the scheme only dealt with those employees who had completed 10 years or more continuous service with a minimum 240 days in each calendar year. The State had proposed that those who had completed 10 years or more of such service as on 31.12.1991 will be treated as monthly rated employees on consolidated fixed pay without allowances. The State had also proposed that those employees who had completed 10 years of continuous service as on 31.12.1987 would be appointed on work charged basis in a phased manner. The third category was of employees who had completed 20 years of continuous service as on 31.12.1992 and the State had proposed that they be regularized from 1.12.1993. Para 4 of the scheme, as

proposed by the State, envisaged that in the event of any anomaly between the wages prescribed for monthly rated employees and the wages as prescribed by the government under the Minimum Wages Act the employee would be entitled to the higher of the two wages.

The Apex Court did not accept the scheme as proposed by the State of Himachal Pradesh and modified it. Under Clause (1) of the scheme, as modified, all the employees who had completed 10 or more years of continuous service with a minimum of 240 days in a calendar year as on 31.12.1993 were to be appointed as work charged employees w.e.f. 1.1.1994. Para 2 of the scheme, as approved by the Apex Court, provides that those who had not completed 10 years of continuous service as on 31.12.1993 shall be appointed as work charged on completion of said period of 10 years. It is apparent from a reading of para 2 that para 2 contemplates that an employee to be covered under para 2 must have completed at least one year i.e. 240 days of service prior to 31.12.1993. Para 3 of the scheme relates to the payment of wages with which we are not concerned. Para 4 of the scheme, as modified by the Apex Court, provides that regularization of daily paid/Muster Roll workers shall be done in a phased

manner on the basis of seniority-cum-suitability. No further direction was issued by the Apex Court for granting work charged status to any other employees.

We have considered both the schemes and find that the dispute before the Apex Court was in respect of the employees who had joined services much before 31.12.1993. None of the schemes dealt with employees engaged thereafter, except that under para 4 of the scheme as amended general directions were issued for regularization of all daily waged muster roll workers in a phased manner. Para 1 of the approved scheme deals only with employees who had completed 10 years of service as on 31.12.1993. Para 2 of the scheme deals with employees who had not completed 10 years of service as on 31.12.1993. However, we are of the firm opinion that para 2 relates only to employees who had at least served for one year prior to 31.12.1993. This scheme was a one time scheme dealing with employees who had rendered sufficient service upto 31.12.1993. We are not in agreement with the learned counsel for the employees that this scheme applies to daily waged employees engaged thereafter. The only portion of the scheme which may relate to such employees is para 4 which relates to regularization of all daily waged/muster

roll workers. Paras 1 & 2 of the scheme relate to the workers specified in those paragraphs.

The dispute before the Apex Court was in respect of regularization of services of the employees who had approached it. No doubt, the Apex Court widened the scope of the dispute and passed general directions in respect of all employees who were working on daily waged basis with the State of Himachal Pradesh. However, the scheme, as approved by the Supreme Court in Mool Raj Upadhayaya's case clearly indicates that this was a one time scheme and it was not a continuing scheme as urged by the workmen. The Apex Court while modifying the scheme has kept in consideration the financial burden which may be incurred by the State Government and, therefore, in fact directed that the State should not be burdened with financial obligation prior to January, 1994 and the scheme would be brought into operation only w.e.f. January 1, 1994.

The scheme does not deal with future contingencies. We cannot read into the judgment of the Supreme Court or in the scheme as approved by the Supreme Court anything more than what is stated in it. As per our reading of the scheme the same only applies to employees who had either completed 10 years of

continuous service as on 31.12.1993 or the employees who had rendered one or more years' of service, but had not completed 10 years of service as on 31.12.1993. This scheme does not apply to those employees who had not completed even one year of service as on 31.12.1993 or who were employed thereafter. The first question is answered accordingly.

Under para 4 of the scheme the State was under an obligation to regularize all daily waged/muster roll workers whether they had joined prior to 31.12.1993 or thereafter. The State has framed a scheme in this behalf on 6th May, 2000. In our opinion those employees who are not governed by the direction given in Mool Raj Upadhyaya's case as set out by us above, shall be governed by the scheme of 2000. The second question is answered accordingly.

The State of H.P. has also raised a plea that the scheme in Mool Raj Upadhyaya's case is only applicable to the employees of the IPH and PWD departments of the State of H.P. and is not applicable to other employees. We have already quoted para 6 of the affidavit of Mr. Subramanyam which clearly shows that the scheme, as presented by the State of H.P. to the Apex Court, was to be applicable to all the daily rated

employees in all the departments in H.P. In view of the affidavit of Mr. Subramanyam, the State cannot now urge that this scheme is not applicable to other departments. In answer to the third question, it is held that the scheme is applicable to all daily waged employees working in any department of State of H.P.

The last question raises some interesting points. There have been instances where some employee has worked as beldar for some time and thereafter he has been engaged in a higher scale as mate or supervisor etc. The Tribunal in most of these cases has directed that the employee shoud be granted work charge status in the higher post on completion of 10 years of service after combining the service rendered in the lower scale and the higher scale. The State is aggrieved by these directions. According to the learned Advocate General the State has offered work charge status to these employees on completion of 10 years of combined service in the lower of the two scales and the State cannot be directed to grant work charge status in the higher scale. On the other hand, it is contended on behalf of the employees that since the employees are already working in the higher scale, it would not be fair and

equitable to grant them work charge status in the lower scale.

We have considered the arguments from all angles. We are of the view that the employee cannot be given the benefit of combining service rendered in both the scales and be granted work charge status in the higher scale. We do, however, feel that at times it may be inequitable to grant the employee work charge status in the lower scale without giving him an option in this regard. We are giving two examples to illustrate two extreme positions. In example (i) we will deal an employee (A) who joined service on 1.1.1990. He works in the lower scale of beldar from 1.1.1991 to 31.12.1999. He is thereafter posted as Supervisor in the higher scale. Should he be granted work charge status as beldar or as Supervisor w.e.f. 1.1.2001? The other example is converse. Supposing employee (B) has worked as beldar w.e.f. 1.1.1991 to 31.12.1991 and from 1.1.1992 he has worked as Supervisor. From which date should we grant him work charge status and in what scale? It is obvious that in the first case the employee would not mind being granted work charge status even in the lower scale after 10 years w.e.f. 1.1.2000 since grant of work charge status would mean that he would get regular scale of pay. But should

the employee be granted work charge status in the higher scale ? We cannot agree with this preposition.

After considering all the pros and cons and keeping in view the fact that various anomalous situations may arise we are of the considered view that when an employee completes 10 years of continuous service combined in two scales, an option should be given to the employee to either accept work charge status in the lower scale or he may continue to work on daily rated basis in the higher scale and claim work charge status in the higher scale on completion of 10 years of continuous service in the said scale. In the examples given above, employee (A) may prefer to accept work charge status w.e.f. 1.1.2001 even in the lower scale of beldar because otherwise he may have to wait for 9 years before he is granted work charge status. On the other hand, employee (B) in the second example may prefer to delay the grant of work charge status by one year so that he can get work charge status in the higher scale. We feel that in each case the choice should be left to the employee. However, if the employee on being given a chance to exercise his option does not convey his option within 30 days, he shall be granted work charge status in the lower scale by

combining the service rendered in both the scales. This answers the fourth question.

All the writ petitions are disposed of in the aforesaid terms. The order of the learned Tribunal shall stand modified in view of the various directions given by us.

(Deepak Gupta), J.

December 29, 2007(K) (V. K. Ahuja), J.